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JUL 08 2005

In re Application of :
Patton, et al. : ON PETITION **OFFICE OF PETITIONS**
Application No. 10/693,318 :
Receipt Date: October 24, 2003 :
Docket No.: 0001.13 :

This is a decision on the "Petition" filed March 14, 2005, wherein petitioners request the above-identified application be accorded a filing date of October 24, 2003 with page 20 of the specification made part of the application.

The petition is **DISMISSED**.

The application was received by the USPTO on October 24, 2003. On February 24, 2005, a Notice of Omitted Item(s) in a Nonprovisional Application ("Notice") was mailed indicating that the application had been accorded a filing date but that Page 20 of the specification appeared to have been omitted from the application as filed.

The Notice permitted applicant to either: (1) promptly establish prior receipt in the PTO of the omitted items at issue (generally by way of a date-stamped postcard receipt (MPEP 503)), or (2) promptly submit the omitted drawing(s) in a nonprovisional application and accept the date of such submission as the application filing date. An applicant asserting that the items in question were in fact deposited in the PTO with the application papers must file a petition (and the appropriate petition fee) with evidence of such deposit. An applicant desiring to submit the omitted items and accept the date of such submission as the application filing date must file any omitted items with an oath or declaration in compliance with 37 CFR 1.63 and 1.64 referring to such items and a petition under 37 CFR 1.182 (with the petition fee under 37 CFR 1.17(h)) requesting the later filing date within two months of the date of the Notice (37 CFR 1.181(f)).

Petitioners argue that the application as filed included Page 20 of the specification and has included as proof of mailing and

proof of receipt of Page 20 of the specification a copy of a return postcard receipt date stamped by the Office indicating the receipt of: a one page of oath or declaration; a one page Express Mail Certificate; a two page data sheet; and 22 pages of specification, claims, and abstract.

The argument and evidence submitted by petitioners have been considered, but are not persuasive. The USPTO file is the official record of the papers originally filed in this application. An applicant alleging that a paper was filed in the Office and later misplaced has the burden of proving the allegation by a preponderance of the evidence.

Review of the official application reveals that, as indicated on the postcard receipt, the Office did in fact receive a one page of oath or declaration; a one page Express Mail Certificate; a two page data sheet; and 22 pages of specification, claims, and abstract. Page 20 of the specification is not among the papers received. Regarding the specification, claims, and abstract, the official application file contains 20 pages of specification numbered pages 1-19 and page 21, one page of abstract, and one page of claims (22 pages in total). Thus, the date stamped return receipt postcard does establish that the Office received 22 pages of specification, claims, and abstract, however the postcard does not serve as prima facie evidence of receipt of page 20 of the specification.

Any petition for reconsideration of this decision must be submitted within **TWO (2) MONTHS** of the mail date of this decision. The time period for requesting reconsideration may not be extended pursuant to 37 CFR 1.136. (37 CFR 1.181(f))

Further correspondence with respect to this matter should be addressed as follows:

By mail:

Mail Stop Petition

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile:

(703) 872-9306

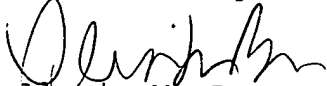
By hand:

U.S. Patent and Trademark Office
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As the relief requested by petitioner has been dismissed, petitioners are advised that the instant application is being returned to the Office of Initial Patent Examination with a filing date of October 24, 2003 without entry of page 20 as part of the original disclosure.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3205.



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Office of Petitions